

## 25.103 Exceptions.

When one of the following exceptions applies, the contracting officer may acquire a foreign end product without regard to the restrictions of the Buy American statute:

(a) *Public interest.* The head of the agency may make a determination that domestic preference would be inconsistent with the public interest. This exception applies when an agency has an agreement with a foreign government that provides a blanket exception to the Buy American statute.

(b) *Nonavailability.* The Buy American statute does not apply with respect to articles, materials, or supplies if articles, materials, or supplies of the class or kind to be acquired, either as end items or components, are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

### (1) *Class determinations.*

(i) A nonavailability determination has been made for the articles listed in [25.104](#). This determination does not necessarily mean that there is no domestic source for the listed items, but that domestic sources can only meet 50 percent or less of total U.S. Government and nongovernment demand.

(ii) Before acquisition of an article on the list, the procuring agency is responsible to conduct market research appropriate to the circumstances, including seeking of domestic sources. This applies to acquisition of an article as-

(A) An end product; or

(B) A significant component (valued at more than 50 percent of the value of all the components).

(iii) The determination in paragraph (b)(1)(i) of this section does not apply if the contracting officer learns at any time before the time designated for receipt of bids in sealed bidding or final offers in negotiation that an article on the list is available domestically in sufficient and reasonably available commercial quantities of a satisfactory quality to meet the requirements of the solicitation. The contracting officer must-

(A) Ensure that the appropriate Buy American statute provision and clause are included in the solicitation (see [22.1101\(a\)](#), [22.1101\(b\)](#), or [25.1102](#));

(B) Specify in the solicitation that the article is available domestically and that offerors and contractors may not treat foreign components of the same class or kind as domestic components; and

(C) Submit a copy of supporting documentation to the appropriate council identified in [1.201-1](#), in accordance with agency procedures, for possible removal of the article from the list.

### (2) *Individual determinations.*

(i) The head of the contracting activity may make a determination that an article, material, or supply is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(ii) If the contracting officer considers that the nonavailability of an article is likely to affect future acquisitions, the contracting officer may submit a copy of the determination and supporting

documentation to the appropriate council identified in [1.201-1](#), in accordance with agency procedures, for possible addition to the list in [25.104](#).

(3) A written determination is not required if all of the following conditions are present:

(i) The acquisition was conducted through use of full and open competition.

(ii) The acquisition was synopsized in accordance with [5.201](#).

(iii) No offer for a domestic end product was received.

(c) *Unreasonable cost*. The contracting officer may determine that the cost of a domestic end product would be unreasonable, in accordance with [25.105](#) and [subpart 25.5](#).

(d) *Resale*. The contracting officer may purchase foreign end products specifically for commissary resale.

(e) *Information technology that is a commercial item*. The restriction on purchasing foreign end products does not apply to the acquisition of information technology that is a commercial item, when using fiscal year 2004 or subsequent fiscal year funds (Section 535(a) of Division F, Title V, Consolidated Appropriations Act, 2004, and similar sections in subsequent appropriations acts).

**Parent topic:** [Subpart 25.1 - Buy American-Supplies](#)